

1 THE HONORABLE MARSHA J. PECHMAN
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TRAVIS MICKELSON, DANIELLE H.
MICKELSON, and the marital community
thereof,

Plaintiffs,

v.

CHASE HOME FINANCE LLC, an unknown
entity, et al.,

Defendants.

No. 2:11-cv-01445-9

DEFENDANT CHICAGO TITLE
INSURANCE COMPANY'S
MOTION FOR CLARIFICATION

**NOTE ON CALENDAR:
MAY 4, 2012**

16 **I. RELIEF REQUESTED**
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On April 16, 2012, the Court filed an Order Granting Motion to Dismiss. (Dkt. No. 58.) Plaintiffs moved for reconsideration of the Order on April 23, 2012. (Dkt. No. 59.) By Minute Order (Dkt. No. 60) filed April 25, 2012, the Court invited Defendants to file a single responsive brief by no later than Monday, April 30, 2012. Chicago took no position regarding Plaintiffs' request for reconsideration of the decision to dismiss quiet title relief against

1 Defendant Federal Home Loan Mortgage Corporation. Chicago, however, seeks clarification
2 of the Court's Order (Dkt. 58) and submits this motion for that limited purpose.

3 **II. MOTION FOR CLARIFICATION**

4 The Court's Order (Dkt. No. 58) maintains claims against Chicago "premised on
5 compliance with the Deed of Trust Act." (Dkt. No. 58 at p. 6, lines 15-16.) Plaintiffs' only
6 claim against Chicago premised on the Deed of Trust Act is a claim for violation of a duty of
7 good faith. Plaintiffs specifically allege under Section B "DEED OF TRUST ACT (Ch. 61.24
8 RCW)" as follows:

9 **iii. Trustees violated duty of good faith**

10 The trustee or successor trustee has a duty of good faith to the
11 borrower, beneficiary, and grantor.

12 (Dkt. 1 at p. 18, lines 8-13.)

13 Chicago seeks clarification of its ruling as the Court previously held in its Order
14 Granting Defendant Chicago Title Insurance Company's Motion to Dismiss Plaintiffs' Claim
15 for Breach of Good Faith dated November 14, 2011, that Chicago did not breach its duty of
16 good faith to Plaintiffs. The Court ruled as follows:

17 Plaintiffs present an untenable claim that Chicago breached its
18 duty of good faith. The court dismisses the claim.

19 (Dkt. No. 35 at p. 4, lines 20-21.)

20 Plaintiffs' allegation that Chicago had not been relieved of its duties as trustee at the
21 time the trustee's sales was initiated was pled as a factual allegation in support of their claim
22 for "Trustees violation of duty of good faith" and not as a separate claim. (Dkt. No. 1 at p. 18,
23

1 lines 8-13.) A separate claim for “breach of duties owed by defendant trustees” appears in
2 Plaintiffs’ Complaint under Section E “DAMAGES” as follows:

3 **iv. Negligence**

4 Based on information and belief Defendant Old Trustee and
5 New Trustee violated their duty of good faith to plaintiffs by
participating with Defendant Servicer....

6 (Dkt. 1 at p. 28, lines 1-10.)

7 This claim under the damages section appears likewise to have been dismissed by the
8 Court’s Order November 14, 2011, as the Court affirmatively held that Plaintiffs’ breach of
9 good faith claim is untenable. (Dkt. No. 35 at p. 4, lines 20-21.)

10 Accordingly, as the Court already decided Chicago did not violate a duty of good faith
11 and there appears to be no other claim against Chicago premised on the Deed of Trust Act.
12 Chicago respectfully requests the Court clarify its April 16, 2012, to address this point.

13 To the extent that the court was unable to determine whether Plaintiffs’ CPA claim
14 against Chicago should proceed; Chicago seeks clarification on this point as well. Plaintiffs
15 premise their CPA claim on unfair or deceptive practices related to Chicago’s duty as original
16 trustee. Chicago’s practices were squarely addressed by the Court in its earlier Order Granting
17 Defendant Chicago Title Insurance Company’s Motion to Dismiss Plaintiffs’ Claim for
18 Breach of Good Faith dated November 14, 2011. (Dkt. No. 35). The Court found that
19 Chicago’s practices did not breach any duty of good faith, there was “no affirmative duty of
20 investigation on Chicago,” and the Court observed that Chicago was not even alleged to have
21 engaged in or caused the foreclosure proceedings. (Dkt. No. 35 at p. 5, lines 19-23 and p. 6,
22 lines 1-12.) In light of the Court’s earlier ruling Chicago seeks clarification.

III. CONCLUSION

For the above reasons, Chicago seeks clarification of the Court's Order Granting Motion to Dismiss. (Dkt. No. 58).

DATED this 4th day of May, 2012.

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CERTIFICATE OF SERVICE

I certify that on the date given below I electronically filed this document entitled
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